

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CR. NO. 10-00680 LEK
)	
Plaintiff,)	
)	
vs.)	
)	
JOSEPH W. SULLIVAN,)	
)	
Defendant.)	
_____)	

**ORDER TO SHOW CAUSE AND GRANTING DEFENDANT'S
APPLICATION TO PROCEED IN FORMA PAUPERIS BY A PRISONER**

On April 18, 2012, pro se Defendant Joseph W. Sullivan ("Sullivan") filed a Petition under 28 U.S.C. § 2241 for a Writ of Habeas Corpus ("Petition") in Sullivan v. Hendershot, Civil No. 12-00204 LEK-BMK ("CV 12-00204"). The CV 12-00204 Petition raised two grounds, one of which alleges that, in the instant case ("CR 10-00680"), the district court erred by imposing a two-level sentencing adjustment for obstruction of justice based on conduct for which Sullivan was convicted in United States v. Sullivan, Criminal No. 11-00604 LEK ("CR 11-00604" and "the Obstruction of Justice Ground"). This Court has construed the Obstruction of Justice Ground as properly raised as a motion to vacate, set aside, or correct a sentence by a person in federal custody under 28 U.S.C. § 2255. [CV 12-00204, dkt. no. 6.] On November 13, 2012, Sullivan filed his Amended Petition under 28 U.S.C. § 2241 for a Writ of Habeas Corpus ("Amended Petition"),

omitting the Obstruction of Justice Ground. [CV 12-00204, dkt. no. 9.]

On October 16, 2012, Sullivan also filed a Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody ("§ 2255 Motion"). The § 2255 Motion raised challenges to Sullivan's sentences imposed in CR 10-00680 and in CR 11-00604. The Motion was dual filed in both cases. [CR 10-00680, dkt. no. 68; CR 11-00604, dkt. no. 30.] The grounds asserted in the § 2255 Motion were different from the grounds asserted in the CV 12-00204 Petition. Sullivan, however, later withdrew the § 2255 Motion and confirmed that he only wanted to pursue the grounds he originally raised in the CV 12-00204 Petition. [CR 10-00680, dkt. no. 72; CR 11-00604, dkt. no. 34.] On November 26, 2012, in the instant case and in CR 11-00604, Sullivan filed an Amended Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody ("Amended § 2255 Motion"). [CR 10-00680, dkt. no. 74; CR 11-00604, dkt. no. 36.] The Amended § 2255 Motion only asserts the Obstruction of Justice Ground that Sullivan originally raised in the CV 12-00204 Petition.

I. Order to Show Cause

The Court has reviewed the Amended § 2255 Motion in the instant case, and this Court cannot conclude that it appears plainly from the face of the Amended § 2255 Motion that Sullivan

is not entitled to relief. Further, it appears that the Amended § 2255 Motion is in compliance with the rules governing the form of § 2255 motions. This Court therefore ORDERS, pursuant to Rule 5 of the Rules Governing Section 2255 Proceedings for the United States District Courts ("§ 2255 Rules"), that Plaintiff the United States of America ("the Government") file an answer to the Amended § 2255 Motion on or before **January 4, 2013**. The Government is ORDERED to attach all relevant transcript portions or briefs that are not available in the records of this district court to the answer as required by Rule 5 of the § 2255 Rules. Sullivan may file a reply to the answer by no later than **February 4, 2013**.

The Court DIRECTS the Clerk's Office to serve a copy of this order, along with a copy of the Amended § 2255 Motion, on the Office of the United States Attorney for the District of Hawai'i.

II. Application to Proceed in Forma Pauperis

Also on October 16, 2012, Sullivan filed an Application to Proceed in Forma Pauperis by a Prisoner ("Application"). [CR 10-00680, dkt. no. 69.] This Court denied Sullivan's Application without prejudice. [Id., dkt. no. 70.] On November 21, 2012, Sullivan filed an amended Application to Proceed in Forma Pauperis by a Prisoner ("Amended Application"). [Id., dkt. no. 73.] Sullivan's Amended Application shows that he

qualifies as a pauper within the meaning of 28 U.S.C. § 1915.

This Court therefore GRANTS the Amended Application.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, December 4, 2012.



/S/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

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